

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 00-10453-RWZ

MILTON GORDON

v.

PETER A. PEPE, JR., et al.

MEMORANDUM OF DECISION AND ORDER

March 6, 2003

ZOBEL, D.J.

Plaintiff Milton Gordon is an inmate at the M.C.I. Cedar Junction state prison in Walpole, Massachusetts. His Second Amended Complaint against defendants Peter A. Pepe, Jr., and Sherry Elliott alleges that prison officials are violating his federal and state constitutional and statutory rights by refusing to provide meals that conform to the dietary restrictions of the Rastafarian religion. Defendants have filed a motion to dismiss for failure to state a claim for which relief can be granted.

Much of defendants' motion is devoted to arguing that (1) the prison diet does not violate plaintiff's religious freedom; (2) plaintiff has failed to allege a proper claim for retaliation; (3) defendants are entitled to qualified immunity; and (4) plaintiff cannot meet the "threats, intimidation, or coercion" requirement of the Massachusetts Civil Rights Act. All of these arguments involve disputed issues of fact and are not appropriate for resolution at this time.

Defendants further contend that plaintiff cannot base a claim for damages directly upon the State Constitution or upon the regulations of the Massachusetts Department of

Corrections. It is unnecessary to reach these questions because the Second Amended Complaint includes statutory bases for all claims under state law.

Finally, defendants argue that plaintiff's cause of action under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA), codified at 42 U.S.C. § 2000cc, fails because the statute exceeds Congress's authority under the Commerce and Spending Clauses of the United States Constitution, violates the First and Tenth Amendments, and cannot abrogate the Commonwealth's Eleventh Amendment sovereign immunity. The statute is a valid exercise of Congressional power. See Mayweathers v. Terhune, 2001 WL 804140, at \*2-\*8 (E.D. Cal. July 2, 2001).

Accordingly, defendants' Motion to Dismiss Plaintiff's Second Amended Complaint is denied.

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DATE

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RYA W. ZOBEL  
UNITED STATES DISTRICT JUDGE